

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**BOARD OF ZONING ADJUSTMENT**



Application No. 13575, of Bon Wit Plaza Unit Owners' Association, pursuant to Paragraph 8207.11 of the Zoning Regulations, for variances from the prohibition against allowing parking aisle space with a width less than fourteen feet (Sub-section 7206.5) and from the loading berth requirements (Sub-section 7302.1) to continue to use its parking garage as is and to eliminate the loading berth and utilize the area for parking in an R-5-D District at the premises 2401 H Street, N.W., (Square 30, Lot 17).

HEARING DATE: October 21, 1981

DECISION DATES: December 2, 1981 and January 6, 1982

FINDINGS OF FACT:

1. The subject property is located in an R-5-D District on the northwest corner of the intersection of 24th and H Streets, N.W.

2. The subject property is improved with an eight story apartment building containing 115 units. It was built in 1960.

3. The structure has two levels of underground parking. The upper level has a ramp leading down from 24th Street and the lower level has a ramp leading down from H Street.

4. When the building was built in 1960, the plans approved by the District of Columbia, marked as Exhibits 29 and 30 of the record, provided for a loading berth and platform on the upper garage level. The plans also provided for thirteen parking spaces on the upper level and eighteen parking spaces on the lower level. All the aisles leading to the thirty-one spaces met the width requirements of the Zoning Regulations.

5. Sometime subsequent to official approval of the plans having been given, pencil and ink modifications to the plans were made, to rearrange and increase the number of the parking spaces on the lower level, and to replace the loading berth and platform on the upper level with parking spaces.

6. The garage was actually laid out and operated since it opened in the manner described by the pencil and ink

modifications. That arrangement was never approved by the District of Columbia and does not comply with the Zoning Regulations.

7. In 1979, the owner of the building, Mrs. Bessie Siegel, sold the building to the Bon Wit Tenants Association. The building was subsequently converted to condominium ownership, and is now owned by the Bon Wit Plaza Unit Owners' Association. Individual tenants own the dwelling units in the building.

8. At the time of conversion, the condominium plat was reviewed by the Zoning Regulations Division, to determine if the subdivision complied with the Zoning Regulations. The plat originally submitted showed no loading berth and included three legal parking spaces in the area originally approved as a loading berth and platform. Joseph F. Bottner, Jr., Chief of the Zoning Review Branch, properly refused to approve such plans for failing to comply with the Zoning Regulations.

9. To comply with the regulations and obtain approval for the subdivision, the plat was redrawn to include a "loading bay" and "loading dock" on the upper parking level, as shown on sheet 4 of Exhibit No. 6 of the record. The plans were also revised to relocate the three parking spaces in the loading area, two on the upper level and one on the lower level. None of the spaces met the size requirement of the regulations, but none is a required parking space.

10. The condominium plat indicated that all aisles were to be at least fourteen feet in width. The plat did not show the columns of the building. The plat was approved for zoning purposes with the changes described.

11. The thirty-seven parking spaces have been sold to the owners of individual units in the building.

12. Upon subsequent field inspection by the Zoning Regulations Division, it was determined that because of the location of the structural columns of the building, the clear aisle width at one point on the upper level is only thirteen feet six inches, and at one point on the lower level is only thirteen feet, three inches. The applicant thus seeks a variance from the requirements of Sub-section 7206.5 that the aisles serving parking spaces be at least fourteen feet wide.

13. The applicant further desires to eliminate the required loading platform and berth, and replace them with three additional parking spaces. Such action would require a variance from Sub-section 7304.1.

14. A structural engineer retained by the applicant submitted a letter stating that any alteration to the existing columns would adversely effect the structural stability of the building. The Board so finds.

15. The condominium declarations established the size and location of the of the thirty-seven parking spaces. It is virtually impossible to amend the declarations at this point to reduce in size and relocate the parking spaces.

16. The applicant argued that the Board is estopped from denying the variance as to aisle width, because of its reliance upon the condominium plat approved by the Zoning Regulations Division. The applicant relied upon the case of Saah v D.C. Board of Zoning Adjustment, D.C. App. No. 80-88, August 28, 1981.

17. The applicant argued that the loading berth and platform are unnecessary and inconveniently located. The applicant argued that loading can easily be accommodated through use of a driveway located in front of the building and through the main entrance to the building. The applicant further argued that the loading berth and platform had historically not been used and will not be used if reserved for that purpose.

18. The applicant presented no testimony or evidence that established an exceptional or extraordinary situation or condition of the property as related to the loading variance. The applicant presented no testimony or evidence that it would suffer any practical difficulty if the Zoning Regulations are strictly applied.

19. Advisory Neighborhood Commission 2A, by resolution dated October 6, 1982, advised the Board that it endorsed the application. The ANC found that the granting of the variances would be of benefit to the residents in the building, would not have a negative impact on the community and there was no opposition to the application.

20. The Board is required by statute to give "great weight" to the written recommendations for the ANC. The Board finds that the ANC's position on impact is correct. However, in order to grant an application, the Board must find that an application meets all the tests set forth in Paragraph 8207.11. As set forth in Finding No. 18, in part this application does not.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and the evidence of record, the Board concludes that the requested variances are area variances, the granting of which requires the showing of an exceptional or extraordinary condition of the

property which creates a practical difficulty for the owner. As to the aisle width variance, the Board concludes that the location of the structural columns of the building, combined with the location of the parking spaces fixed by the condominium declarations, creates an exceptional condition. Strict application of the regulations would cause practical difficulties for the owner in requiring either the moving of the columns or the amending of the condominium documents.

As to the loading berth requirement, the Board concludes that the applicant has demonstrated no exceptional or extraordinary condition of the property. Despite the fact that no loading berth or platform has been provided in the building, the original plans for its construction show the berth and the approved condominium plat shows it also. The applicant provided no indication of any practical difficulty that it would suffer if the regulations were strictly applied and the loading berth was continued to be provided. The Board concludes that the applicant failed to prove that it met the test for the loading berth variance set forth in Paragraph 8207.11.

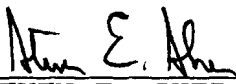
The applicant's reliance upon the case of Saah v. B.Z.A. is misplaced. In that case, the D.C. Court of Appeals reversed a decision of the Board denying an application. The Court held that the zoning authorities, having originally approved and later cancelled the permit at issue are estopped from denying the variance. In this case, the Department is not seeking to cancel or revoke a permit. The Zoning Administrator has sought to have an applicant comply with the specific terms of the approval granted. It is clear from Exhibit No. 6 of the record, that the applicant proffered a conforming arrangement in the garage. The Board concludes that the District cannot now be estopped from denying the variance as the District has never changed its position on the proposed garage layout.

The Board concludes that it has accorded to the ANC the "great weight" to which it is entitled. However, for the reasons set forth herein, only the aisle width variance can be granted. The Board concludes that such requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and maps. It is therefore ORDERED that the variance from the aisle width requirement is GRANTED and the variance from the loading berth and platform requirement is DENIED.

VOTE: 5-0 (Walter B. Lewis, William F. McIntosh, Connie Fortune, Charles R. Norris and Douglas J. Patton to GRANT the aisle width variance and DENY the loading berth variance).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:

  
STEVEN E. SHER  
Executive Director

FINAL DATE OF ORDER: MAY 24 1982

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF LICENSES, INVESTIGATIONS AND INSPECTIONS.